

**§ 36.230 Contract revisions or amendments.**

(a) Any contract made under this subpart may be revised or amended as deemed necessary to carry out the purposes of the program, project, or function being contracted. Those changes initiated by the Government shall be subject to the applicable contract Change Clauses prescribed in 41 CFR 3-4.6013 and 3-4.6014.

(b) However, a tribal contractor may make a written request for a revision or amendment of a contract to the Contracting Officer. Such requests will be treated in the same manner as initial Self-Determination Proposals and evaluated in accordance with the criteria specified in § 36.208 of this subpart. If the contracting officer declines revision or amendment of the contract as requested, he shall notify the tribal organization in writing within 30 days after receiving the request. Thereafter, an appeal to the Contracting Officer's declination to amend the contract will follow the same processing and procedures outlined in § 36.214 of this subpart.

**§ 36.231 Retrocession of contract programs.**

(a) Whenever an Indian tribe requests retrocession for any contract or portion thereof entered into under this Subpart, retrocession shall be in accordance with the clause titled "Retrocession" as set forth in 41 CFR 3-4.6013 and 3-4.6014, and shall be effective upon a date specified by the Contracting Officer but no later than 120 days after the date of the request from the tribe, except when the tribe and the Contracting Officer mutually agree on a later date.

(b) Immediately after a request for retrocession, representatives of the tribe and the Contracting Officer shall meet and take the following actions:

- (1) Mutually agree on a plan for orderly transfer of responsibilities.
- (2) Mutually agree on a plan for inventorying materials and supplies on hand.
- (3) Establish an accounting of funds, current and anticipated obligations, and costs of operation until the retrocession date.

(4) Identify all records relating to the contract and to the contracted function.

(c) On the date of retrocession, the tribal contractor will deliver to the Contracting Officer all property, materials, supplies and records of whatever nature which have been identified as necessary for the continuation of the program, project or function.

(d) Within 30 calendar days after retrocession, the tribe will furnish the Contracting Officer with a report including but not limited to an accounting of the amounts and purposes for which Federal funds were expended, a description and evaluation of program accomplishments, and reasons why retrocession was requested.

(e) Retrocession of a contract by an Indian tribe shall be without prejudice to:

- (1) Any other contract to which it is a party.
- (2) Any other contracts it may request.
- (3) Any future request to contract for the programs or services covered by the retroceded contract.

(f) Tribal assumption of retroceded contracts. Whenever an Indian tribe chooses to retrocede a contract operated by a tribal organization other than the tribal governing body, the tribal governing body may request to contract for the program. In such a case, the tribal governing body shall submit a contract proposal pursuant to this subpart.

**§ 36.232 Contractor assistance.**

To the extent practicable, the Director, Indian Health Service, shall, at the request of a tribal organization, provide technical assistance to the contractor in attempting to resolve problems or deficiencies in the performance of the contract and to assist the contractor in taking such corrective action as may be prescribed pursuant to § 36.233(a).

**§ 36.233 Assumption and reassumption of contract programs.**

(a) When the Director or his delegate determines that the performance of a contractor under these regulations involves (1) the violation of the rights or endangerment of the health, safety, or

welfare or any persons, or (2) gross negligence or the mismanagement in the handling or use of funds under the contract, he will, in writing, notify the contractor of such determination and will request that the contractor take such corrective action within such period of time as the Director or his delegate may prescribe.

(b) When the Director or his delegate determines that a contractor has not taken corrective action (as prescribed by him under paragraph (a) of this section) to his satisfaction, he may, after the contractor has been provided an opportunity for a hearing in accordance with paragraph (c) of this section, rescind the contract in whole or in part and, if he deems it appropriate, assume or resume control or operation of the program, activity, or service involved.

(c)(1) When the Director or his delegate has made a determination described in paragraph (b) of this section, he shall in writing notify the contractor of such determination and of the contractor's right to request a review of such determination and of the determination described in paragraph (a) of this section. Such notification by the Director or his delegate shall set forth the reasons for the determination in sufficient detail to enable the contractor to respond and shall inform the contractor of its right to a hearing on the record before a Contract Appeals Board described in paragraph (d) of this section. Upon the request of the contractor for a hearing, the Board, established pursuant to paragraph (d) of this section shall in writing within 10 days of the establishment notify the contractor of the time, place and date of the hearing which will be held not later than 45 days after the request for a hearing.

(2) Where the Director or his delegate determines that a contractor's performance under a contract awarded under this subpart poses an immediate threat to the safety of any person, he may immediately rescind the contract in whole or in part and, if he deems it appropriate, assume or resume control or operation of the program, activity, or service involved. Upon such a decision he will immediately notify the contractor of such action and the basis therefor; and offer the contractor an

opportunity for a hearing on the record before the Contract Appeals Board established pursuant to paragraph (d) of this section to be held within 10 days of each action.

(d)(1) The Contract Appeals Board shall be composed of 3 persons appointed by the Director, Indian Health Service. Such persons may not be selected from the immediate office of any person participating in the determinations at issue. The Board shall afford the contractor the right:

- (i) To notice of the issues to be considered;
- (ii) To be represented by counsel;
- (iii) To present witnesses on contractor's behalf;
- (iv) To cross-examine other witnesses either orally or through written interrogatories; and
- (v) To compel the appearance of Indian Health Service personnel or to take depositions of such persons at reasonable times and places.

(2) The Contracts Appeals Board shall make an initial written decision which shall become final with 20 days unless the Director, Indian Health Service or his representative modifies or reverses the decision. Any such decision by the Director of the Indian Health Service or his representative be in writing, shall be specific as to the reasons for such decision, and shall be considered final.

(3) Where Board is considering issues arising under paragraph (c)(2) of this section, the Board shall within 25 days after the conclusion of the hearing, notify all parties in writing of its decision, which shall be considered final.

(e) In any case where the officer has rescinded a contract under paragraphs (b) or (d) of this section, he may decline to enter into a new contract agreement with the contractor until such time as he is satisfied that the basis for the rescission has been corrected.

Nothing in this section shall be construed as contravening the Occupational Safety and Health Act of 1970 (84 Stat. 1590), as amended (29 U.S.C. 651).

**§ 36.234 Operation of retroceded or reassumed contracts.**

(a) The IHS shall endeavor to provide to the tribe(s) and Indians served by a